

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

One Earth Environmental, Inc.
1551 Lana Way
Hollister, California 95023

EPA ID# CAR000003707

Respondent.

Docket HWCA 20040599

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and One Earth Environmental, Incorporated, a California corporation (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent transports hazardous waste from the following site: 1551 Lana Way, Hollister, California 95023 (Site).

1.3. Inspection. The Department inspected the Site on August 18, 2004.

1.4. Authorization Status. Respondent transports hazardous waste from the following site: 1551 Lana Way, Hollister, California 95023 (Site). The Respondent currently possesses a valid registration as a hazardous waste transporter with the Department.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified

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provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

1.7. Admissions. Respondent admits the violations as alleged.

VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1 The Respondent violated Health and Safety Code section 25163(a)(1) in that between December 1, 2003 and December 12, 2003 Respondent transported hazardous waste without possessing a valid registration as a hazardous waste transporter.

2.2 The Respondent violated California Code of Regulations, title 22, section 66263.22(a) in that on or about August 18, 2004, Respondent could not produce a copy of all Hazardous Waste Manifests used by Respondent to transport hazardous waste between December 1, 2003 and December 12, 2003.

SCHEDULE FOR COMPLIANCE

3.1.1. Respondent has corrected the violations set forth above.

3.2. Submittals. All submittals from Respondent pursuant to this Consent

Order shall be sent simultaneously to:

Ms. Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
700 Heinz Avenue, Suite 200
Berkeley, California 94710

3.3. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

3.4. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.5. Sampling, Data, and Document Availability.

3.5.1. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent

pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.5.2. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.6. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Order, nor shall the State of California or the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

3.7. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above and/or this schedule for compliance and were approved by the Department are hereby incorporated into this Order.

OTHER PROVISIONS

4.1. Additional Enforcement Action. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.5. Time Periods. "Days" for the purpose of this Order means calendar days.

4.6. Compliance with Waste Discharge Requirements. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

4.7. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

PENALTY

5.1. Respondent shall pay the Department the total sum of \$1,160.00, which includes as reimbursement of the Department's costs incurred in connection with this matter.

5.2. Payment in the total amount of \$1,160.00 is due as follows:

| <u>Date</u> | <u>Amount</u> |
|-------------------------|-----------------|
| <u>January 1, 2005</u> | <u>\$360.00</u> |
| <u>February 1, 2005</u> | <u>\$300.00</u> |
| <u>March 1, 2005</u> | <u>\$250.00</u> |
| <u>April 1, 2005</u> | <u>\$250.00</u> |

5.3. If Respondent shall fail to pay any sum required to have been paid pursuant to paragraph 5.2 above, the total sum set forth at paragraph 5.1 above, with due credit for all sums paid, shall then be immediately due and owing, without further notice together with interest on the unpaid balance at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

5.3. Respondent's check(s) shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Ms. Astrid L. Brown, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, California 93611

Ms. Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Bldg. F., Suite 200
Berkeley, California 94710

Mr. James J. Grace, Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

EFFECTIVE DATE

6. The effective date of this Order is the date it is signed by the Department.

Dated: 1/11/05

(Original signed by Hector DelReal, President)
Signature of Respondent's Representative

(Hector DelReal/President)
Typed or Printed Name and Title of
Respondent's Representative

Dated: 1/20/05

(Original signed by Astrid L. Brown)
Astrid L. Brown, R.E.A.
Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control